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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

KELLYE CROFT,

Plaintiff,

vs.

JAMES DOLAN; HARVEY
WEINSTEIN; JD & THE STRAIGHT
SHOT, LLC; THE AZOFF COMPANY
HOLDINGS LLC f/k/a AZOFF MUSIC
MANAGEMENT, LLC; THE AZOFF
COMPANY LLC f/k/a AZOFF MSG
ENTERTAINMENT, LLC; DOE
CORPORATION 1-10,

Defendants.

Case No. 2:24-cv-00371-PA (AGR)

**DEFENDANT HARVEY
WEINSTEIN'S NOTICE OF
MOTION AND MOTION TO
STAY THIS CASE AS TO HIM;**

**MEMORANDUM OF POINTS
AND AUTHORITIES**

[SUPPORTING DECLARATIONS
AND PROPOSED ORDER FILED
CONCURRENTLY]

Date: July 22, 2024

Time: 1:30 p.m.

Location: Courtroom 9A

Judge: Hon. Percy Anderson

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on July 22, 2024, at 1:30 p.m., or as soon thereafter as this matter may be heard, in Courtroom 9A of this Court, located at 350 West 1st Street, Los Angeles, California 90012, Los Angeles, California 90012-4565, Defendant Harvey Weinstein ("Defendant"), by and through his attorneys Kupferstein Manuel LLP and Aidala, Bertuna & Kamins PC, will and hereby does move the Court for a stay of this case as to him, on the grounds that he should not be forced to decide between being prejudiced in this civil litigation, if he asserts his Fifth Amendment privilege, or being prejudiced in criminal

1 litigation, if he were to waive that privilege in this case. Defendant is presently
 2 subject to retrial in New York following reversal of criminal convictions for sexual
 3 assault and sexual misconduct, and is appealing his conviction in California for
 4 sexual assault. Those criminal cases arise from alleged conduct similar to that
 5 underlying this action.

6 Based on these same grounds, stays have been granted in three other cases in
 7 this court: *Dominique Huett v. The Weinstein Company LLC*, No. CV 18-6012
 8 SVW (MRWx) (motion to stay granted, Dkt. 50); *Judd v. Weinstein*, 2:18-cv-
 9 05724 PSG (FFMx) (motion to stay granted, Dkt. 62); and *Loman v. Weinstein*,
 10 2:18-cv-07310-CBM-KS (Dkt. 37). Stays have also been granted in three
 11 California civil cases pending in Los Angeles Superior Court.

12 This motion is made following the conference of counsel pursuant to L.R. 7-
 13 3, which took place via video conference on April 2, 2024.

14 Defendant's motion is based on this Notice of Motion and accompanying
 15 Memorandum of Law, the concurrently-filed Declarations of Phyllis Kupferstein
 16 and Imran H. Ansari, and accompanying Exhibits; the concurrently-filed Proposed
 17 Order; such further briefing and argument that may be presented before and at the
 18 hearing; and all other facts and circumstances upon which the Court may take
 19 judicial notice.

20 Dated: June 20, 2024

KUPFERSTEIN MANUEL LLP

21 /s/ Phyllis Kupferstein

22 Phyllis Kupferstein

23 Attorneys for Defendant

24 Harvey Weinstein
 25
 26
 27
 28

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SUPPORT OF DEFENDANT
HARVEY WEINSTEIN'S
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1 Defendant Harvey Weinstein, by his attorneys Kupferstein Manuel LLP and
2 Aidala, Bertuna & Kamins PC, respectfully submits this Memorandum of Law in
3 support of his motion to stay this proceeding as to him pending resolution of
4 related criminal cases against him in California and New York state courts. For
5 the reasons set forth below and in the attached Declarations of Imran H. Ansari,
6 Esq. (“Ansari Dec.”) and Phyllis Kupferstein, Esq. (“Kupferstein Dec.”),
7 Defendant’s motion should be granted in all respects.

8 **Preliminary Statement**

9 Defendant should not be forced to decide between being prejudiced in this
10 civil litigation, if he asserts his Fifth Amendment privilege, or being prejudiced in
11 criminal litigation, if he were to waive that privilege in this case. Accordingly, this
12 action should be stayed as Defendant is presently subject to retrial in New York
13 state court on charges of sexual assault and sexual misconduct, and is appealing
14 his conviction in California state court on similar charges, arising from alleged
15 conduct similar to that underlying this action. Plaintiff Kellye Croft (“Plaintiff”)
16 alleges she was sexually assaulted by Defendant in a Beverly Hills hotel room in
17 January 2014. Plaintiff’s allegations of sexual misconduct parallel the allegations
18 of sexual misconduct in the New York County District Attorney’s Office
19 (“NYDA”) criminal case against Defendant, as well as the allegations upon which
20 the Los Angeles County District Attorney’s Office obtained convictions.

21 It is well-settled that a civil action should be stayed pending a related
22 criminal action involving similar conduct where the defendant risks incrimination.
23 Here, given the overlap between the criminal and civil matters, a stay is warranted
24 as Defendant is unable to respond to the factual allegations of Plaintiff’s First
25 Amended Complaint, respond to or participate in the discovery process, or
26 otherwise litigate this matter, without invocation of his constitutional rights
27 against self-incrimination. If a stay is not granted, Defendant will be forced to
28 invoke his Fifth Amendment rights, thus rendering him unable to defend himself

1 in the civil matter. Under fundamental principles of due process, Defendant is
 2 entitled to a stay of this civil action pending resolution of the pending criminal
 3 cases. In the absence of a stay, this action unfairly burdens Defendant's
 4 constitutional rights to defend himself against the criminal charges and will
 5 potentially interfere with a criminal prosecution. Therefore, Defendant's motion
 6 to stay should be granted.

7 **Statement of Facts**

8 On April 10, 2024, Plaintiff filed her First Amended Complaint ("FAC")
 9 (Dkt. 48) seeking monetary damages from Defendant and other parties. The FAC's
 10 sole claim against Defendant, the Third Cause of Action, alleges that Defendant
 11 sexually assaulted Plaintiff in violation of California Penal Code Sections 243.4
 12 and 261.

13 **New York criminal proceedings.** On February 24, 2020, a jury found
 14 Defendant guilty of criminal sexual assault in the first degree and rape in the third
 15 degree in *The People of the State of New York v. Harvey Weinstein*, in the Supreme
 16 Court of the State of New York, New York County, Indictment Number
 17 2334/2018. He was acquitted of charges relating to another alleged victim.
 18 Defendant was sentenced to 23 years in prison on March 11, 2020. Declaration of
 19 Imran H. Ansari ("Ansari Dec."), ¶ 3.

20 Defendant's appeal of his conviction to the New York State Appellate
 21 Division was unsuccessful. On August 19, 2022, Chief Judge Janet DiFiore of the
 22 New York Court of Appeals granted Mr. Weinstein's request for leave to appeal
 23 his rape and sexual assault conviction. Defendant's appeal of his New York
 24 conviction was fully briefed and oral argument took place on February 14, 2024.
 25 Ansari Dec., ¶ 4.

26 On April 25, 2024, the New York Court of Appeals overturned Mr.
 27 Weinstein's 2020 rape and sexual assault conviction. Judge Jenny Rivera cited
 28 critical procedural errors, and wrote, "[t]he remedy for these egregious errors is a

new trial.” Ansari Dec., ¶ 5.

On May 1, 2024, the Manhattan District Attorney’s Office said they will be retrying this case and may pursue further indictments, but no new trial date has been set. Mr. Weinstein remains incarcerated in New York pending his retrial. Ansari Dec., ¶ 6.

California criminal proceedings. On or about March 15, 2021, a Los Angeles County grand jury returned an indictment against Defendant on 11 counts of sexual assault involving five women, that allegedly took place between 2004 and 2013. On July 20, 2021, Defendant was extradited from New York to California to face criminal prosecution. Defendant pleaded not guilty to all charges. Ansari Dec., ¶ 7.

On October 24, 2022, Defendant’s trial in Los Angeles County began. On November 15, 2022, Judge Lench dismissed four of the 11 counts against Mr. Weinstein after prosecutors stated they would not proceed with the counts involving one of his accusers. On December 19, 2023, Defendant was convicted on three counts of rape and sexual assault against “Jane Doe 1.” The jurors deadlocked on three counts related to two other victims, and they acquitted him of charges related to a fourth woman. Ansari Dec., ¶ 8.

On December 20, 2022, Judge Lench declared a mistrial on the three counts on which the jury was hung in the Los Angeles action. On February 23, 2023, Mr. Weinstein’s motion for a new trial was denied, and he was sentenced to 16 years in prison in his Los Angeles criminal trial, to run consecutively to his 23-year prison sentence in his New York criminal trial. On or about February 24, 2023, Mr. Weinstein filed notice of his appeal from the Los Angeles conviction. On or about March 14, 2023, Los Angeles prosecutors told Judge Lench that they will not retry Mr. Weinstein on the three counts that left the jurors deadlocked. Judge Lench dismissed those charges. Ansari Dec., ¶ 9.

Defendant’s appeal of his California conviction is in the very early stages.

1 The opening brief was filed on Friday June 7, 2024. Ansari Dec., ¶ 10.

2 **Stays granted in other civil cases against Defendant.** Stay orders have
 3 been granted and remain in effect in several civil cases brought against Defendant.
 4 Based on the same arguments set forth below, Defendant’s motion to stay was
 5 granted by Judge Stephen V. Wilson on February 28, 2019, in *Dominique Huett v.*
 6 *The Weinstein Company LLC*, No. CV 18-6012 SVW (MRWx) (Dkt. 50).
 7 Kupferstein Dec., ¶ 7. Judge Philip S. Gutierrez granted Defendant’s motion to
 8 stay in *Judd v. Weinstein*, 2:18-cv-05724 PSG (FFMx), on April 2, 2019 (Dkt. 62
 9 at 7) (“Taking all factors into account, the Court concludes that it is in the interest
 10 of justice to stay this case.”). Kupferstein Dec. ¶ 4.¹ In *Loman v. Weinstein*, 2:18-
 11 cv-07310-CBM-KS, Judge Consuelo B. Marshall granted a stay on August 9, 2019
 12 (Dkt. 37), which remains in effect. Kupferstein Dec., ¶ 6.

13 Similarly, stays have been ordered in the following California state court
 14 civil cases against Defendant: *Gripp v. Weinstein*, Los Angeles Superior Court
 15 Case No. 21STCV11877 (stay ordered January 7, 2022); *Doe v. Weinstein*, LASC
 16 Case No. 21STCV34987 (stay ordered January 19, 2023); and *Doe v. Weinstein*,
 17 LASC Case No. 23SMCV05932 (stay ordered April 22, 2024). All three stays
 18 remain in effect. Kupferstein Dec., ¶ 8, Exhibits B-D.

19 **Argument**

20 **I. A STAY IS WARRANTED IN LIGHT OF THE PENDING** 21 **CRIMINAL ACTIONS AGAINST DEFENDANT**

22 A stay should issue here because Defendant is presently under criminal
 23 prosecution in the State of New York for the same type of conduct for which
 24 Plaintiff seeks civil liability in this action. Defendant is also presently facing

25
 26 _____
 27 ¹ The *Judd* case was administratively dismissed on July 7, 2023 (Dkt. 103),
 28 “[b]ased on the status of the criminal cases referenced in the parties’ joint status
 report,” but “can be reopened by ex parte application of any party.” Kupferstein
 Dec., ¶ 5.

conviction for rape and sexual misconduct in California.² In this action, Plaintiff alleges that Defendant sexually assaulted her in January 2014 after allegedly dangling a possible job opportunity for her. Dkt. 48, ¶¶ 73-77, 82-89, & 124. While Plaintiff is not a complaining witness in either criminal prosecution, this matter involves the same conduct for which Defendant was tried and convicted. As set forth in the Ansari Dec., Defendant cannot defend himself against Plaintiff's sexual harassment claim without also giving testimony and other information which may be used by New York and California prosecutors against him and which will likely prejudice his defense of the ongoing criminal prosecutions. Ansari Dec. ¶¶ 11-13. As discussed below, a stay is warranted to preserve Defendant's Fifth Amendment right against self-incrimination.

"The Fifth Amendment 'not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.'" *Baxter v. Palmigiano*, 425 U.S. 308, 316 (1976) (internal citations omitted). To avoid the conflict created by parallel civil and criminal proceedings, courts may stay civil proceedings "pending the completion of parallel criminal prosecutions when the interests of justice seemed to require such action [...]." *United States v. Kordel*, 397 U.S. 1, 12 n.27 (1970) (internal citations omitted).

While the Constitution does not require a stay of civil proceedings pending the outcome of criminal proceedings, *see Federal Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 902 (9th Cir.1989), "a court may [nevertheless] decide in its discretion to stay civil proceedings ... 'when the interests of justice seem[] to require such action.'" *Securities & Exchange Comm'n v. Dresser Indus.*, 628 F.2d

² Weinstein adamantly denies all allegations and charges of nonsexual sex and acts of sexual harassment.

1 1368, 1375 (D.C. Cir.), *cert. denied*, 449 U.S. 993 (1980) (quoting *Kordel*, 397
 2 U.S. at 12 n. 27). *See also Keating v. Office of Thrift Supervision*, 45 F.3d 322,
 3 324 (9th Cir. 1995).

4 The decision whether to stay civil proceedings in the face of a parallel
 5 criminal proceeding should be made "in light of the particular circumstances and
 6 competing interests involved in the case." *Molinaro*, 889 F.2d at 902. This means
 7 the court should consider "the extent to which the defendant's fifth amendment
 8 rights are implicated." *Id.*; *see also Keating*, 45 F.3d at 324. Additional factors the
 9 court should generally consider include: (1) the interest of the plaintiffs in
 10 proceeding expeditiously with this litigation or any particular aspect of it, and the
 11 potential prejudice of delay; (2) the burden which any particular aspect of the
 12 proceedings may impose on defendants; (3) the convenience of the court in the
 13 management of its cases, and the efficient use of judicial resources; (4) the
 14 interests of persons not parties to the civil litigation; and (5) the interest of the
 15 public in the pending civil and criminal litigation. *Keating*, 45 F.3d at 324. *See*
 16 *also Trs. of the Plumbers & Pipefitters Nat'l Pension Fund v. Transworld Mech.*,
 17 886 F. Supp. 1134, 1139 (S.D.N.Y. 1995); *SEC v. Blaszcak*, 17-civ-3919, 2018
 18 U.S. Dist. LEXIS 2289, *4 (S.D.N.Y. Jan. 3, 2018); *In re Adelphia Communs.*
 19 *Secs. Litig.*, 2003 U.S. Dist. LEXIS 9736 at *7 (E.D. Pa. May 14, 2003); *Javier H.*
 20 *v. Garcia-Botello*, 218 F.R.D. 72, 74 (W.D.N.Y. 2003); *Walsh Securities, Inc. v.*
 21 *Cristo Prop. Mgmt, Ltd.*, 7 F. Supp. 2d 523, 527 (D.N.J. 1998). Each of these
 22 factors favor the issuance of a stay.

23 A consideration of the relevant factors overwhelmingly weighs in favor of
 24 granting a stay in this case. There is substantial overlap in the issues presented by
 25 the civil and criminal cases. Defendant is currently under indictment. The burden
 26 on Defendant has the potential of being dramatically and unfairly negative if the
 27 stay is denied. The interests of the Court and the public both favor resolution of
 28 the criminal charges before the civil case is addressed because, among other

1 reasons, it will allow the criminal prosecution to proceed unimpeded and
 2 unobstructed by any concerns that may arise in discovery in the civil case. In sum,
 3 here, as in *Maloney v. Gordon*, 328 F. Supp. 2d 508, 510 (D. Del. 2004), “[t]he
 4 public’s interest in the integrity of the criminal case is entitled to precedence over
 5 the civil litigant.” (Citing *Javier H.*, 218 F.R.D. at 75).

6 **II. THE FACT THAT DEFENDANT IS UNDERGOING CRIMINAL**
 7 **PROSECUTIONS IS THE MOST SIGNIFICANT FACTOR**
 8 **WEIGHING IN FAVOR OF A STAY**

9 The Court should consider the fact that Defendant is currently undergoing
 10 multiple prosecutions, and is facing retrial and possible additional charges in New
 11 York. Thus, he presents the “strongest case for deferring civil proceedings until
 12 after completion of criminal proceedings.” *Jones v. Conte*, 2005 WL 1287017, *1
 13 (N.D. Cal. Apr. 19 2015 (J. Illston) (internal quotation omitted); *see also*
 14 *Continental Ins. Co. v. Cota*, 2008 WL 4298372, *2 (N.D. Cal. Sept. 19, 2008)
 15 (stating that the extent to which fifth amendment rights are implicated by a civil
 16 proceeding is the *first* consideration when evaluating a stay request) (emphasis
 17 added). “A stay of a civil case is most appropriate where a party to the civil case
 18 has already been indicted for the same conduct.” *Transworld*, 886 F. Supp. at 1139
 19 (granting stay pending related criminal proceeding). *See also Louis Vuitton*, 676
 20 F.3d at 101 (“There is considerable authority for the principle that a stay is most
 21 justified where a movant [...] is already under indictment for a serious criminal
 22 offense and is required at the same time to defend a civil action involving the same
 23 subject matter”). Whether the defendant has been indicted is considered “‘the most
 24 important factor’ to be considered in the balance of factors [...]” *Maldonado v.*
 25 *City of New York*, No. 17-cv-6618 (AJN), 2018 U.S. Dist. LEXIS 93417, at *4
 26 (S.D.N.Y. June 1, 2018) (internal citations omitted). *See also Hicks v. City of New*
 27 *York*, 268 F. Supp. 2d 238, 242 (E.D.N.Y. 2003) (“A court will generally stay a
 28 civil proceeding when a criminal investigation has ripened into an indictment

1 against the proponent of a stay”).

2 Defendant is currently facing retrial of criminal charges for sexual assault
3 and rape. Based upon that factor alone and the serious risks presented as a result,
4 this Court should stay the civil proceeding. *See Molinaro*, 889 F.2d at 903 (“The
5 case for staying civil proceedings is a ‘far weaker one’ when ‘[n]o indictment has
6 been returned [, and] no Fifth Amendment privilege is threatened.”) (*quoting*
7 *Dresser Indus.*, 628 F.2d at 1376). *See also American Express Bus. Fin. Corp. v.*
8 *RW Prof'l Leasing Servs. Corp.*, 225 F. Supp. 2d 263, 265 (E.D.N.Y. 2002)
9 (granting stay and noting that a stay is especially appropriate where the movant is
10 under criminal indictment).

11 **III. THAT THERE IS SUBSTANTIAL OVERLAP BETWEEN THE** 12 **CIVIL AND CRIMINAL CASES ALSO WARRANTS A STAY**

13 Courts look at the similarities between the civil and criminal cases because
14 self-incrimination is more likely if there is a significant overlap. *Transworld*, 886
15 F. Supp. at 1139. For example, in staying the civil proceeding in *Jones*, Judge
16 Illston noted that civil discovery in the case would overlap with issues in the
17 criminal matter, holding that “if discovery moves forward, the defendant will be
18 faced with the difficult choice between asserting his right against self-
19 incrimination, thereby inviting prejudice in the civil case, or waiving those rights,
20 thereby courting liability in the [criminal] case.” 2005 WL 1287017, **1, 2.
21 Where, as here, the civil and criminal actions involve the same subject matter, *i.e.*,
22 allegations of rape and sexual assault, a stay is likely to be granted. *See Crawford*
23 *& Sons v. Besser*, 298 F. Supp. 2d 317, 319 (E.D.N.Y. 2004) (granting stay of all
24 proceedings including service of answers pending resolution of parallel criminal
25 action).

26 Importantly, the civil and criminal actions do not need to be premised on
27 identical facts to create a strong risk of self-incrimination. *See Louis Vuitton*, 676
28 F.3d at 98. Testimony in a related civil action could constitute admissions of

1 criminal conduct in a criminal prosecution because, “[e]ven where it would not be
 2 direct evidence of wrongdoing with respect to the scheme charged in the criminal
 3 case, such testimony may be admissible as *Fed. R. Evid.* 404(b) evidence in any
 4 criminal trial.” *Id.* (internal citations omitted). Here, the criminal actions and the
 5 civil case, while not involving the same parties, all stem from the same underlying
 6 alleged conduct: sexual misconduct. *See McCormick v. Rexroth*, 2010 WL
 7 934242, * 2 (N.D. Cal. Mar. 15, 2010) (granting stay of civil proceedings pending
 8 resolution of related criminal case where “factual issues in the two cases are
 9 essentially the same”); *Cota*, 2008 WL 4298372, at *2 (granting stay of civil action
 10 when “[i]t is undisputed that all of the civil actions and the criminal action spring
 11 from the same nucleus of facts”).

12 The impossibility for Defendant to respond to Plaintiff’s allegations or
 13 defend himself is exacerbated given the nature of the allegations in this action and
 14 the Criminal Actions. In sex crime prosecutions in New York State Court, the
 15 prosecution often seeks to admit propensity or prior bad act evidence which is
 16 often barred in other types of prosecutions. *Ansari Dec.*, ¶ 12. The NYDA has
 17 already provided notice that it will seek retrial and may seek indictment on
 18 additional charges of similar sexual conduct. *Id.* As such, Defendant cannot give
 19 testimony or evidence concerning the allegations in the FAC regardless of whether
 20 Plaintiff is involved in either criminal prosecution, as it is clear the prosecution
 21 may seek to introduce Plaintiff’s allegations as evidence against Defendant. *Id.*

22 The California Superior Court’s decision in *Judy Huth v. William Henry*
 23 *Cosby, Jr.*, BC565560 (Cal. Sup. Ct. Mar. 30, 2016), is instructive. The defendant
 24 in that case was in a very similar situation as Defendant, in that he was being sued
 25 civilly and criminally prosecuted for sexual assault. In *Huth*, the court granted the
 26 defendant’s motion to stay pending a resolution of a related criminal proceeding
 27 over plaintiff’s objection that the facts and allegations in the civil case were
 28 distinct from those in the criminal matter. In so holding, the court reasoned as

1 follows:

2 Ms. Huth contends the overlap is virtually nonexistent because Mr.
3 Cosby has been charged with a crime in a different place, at a different
4 time (1974 in this case versus 2005 in Pennsylvania) and involving a
5 different alleged victim. The Court disagrees. While there are
6 distinctions between the cases, temporal and otherwise, the allegations
7 both involve sexual assaults. The danger of undermining Mr. Cosby's
8 privilege of self-incrimination is clear.

9 Kupferstein Dec., Exhibit E at 2 (emphasis added).

10 The United States District Court for the District of Massachusetts came to
11 the same decision when dealing with a similar fact pattern in *Green v. Cosby*, 177
12 F. Supp. 3d 673, 680 (D. Mass. 2016). In *Green*, the plaintiffs, who had publicly
13 accused the defendant of sexual assault, brought a claim for defamation as a result
14 of the defendant's public response to the allegations of sexual assault. The
15 defendant filed a motion to stay the civil proceedings because he was, at the time,
16 under indictment for sexual assault (of a woman unrelated to the *Green* action).
17 The court granted the defendant's motion for a discovery stay holding that even
18 though the "civil and criminal cases at issue [...] were not 'entirely parallel,' due
19 to the "the unique factual similarities between the allegations [in the civil case]
20 and those contained in the criminal complaint, there [was] substantial risk that
21 discovery provided by Defendant [in the civil case] could be used against him in
22 a criminal trial." *Id.* Here, the facts are more compelling as, unlike in *Green*,
23 Plaintiff's allegations involve the same type of conduct at issue in the criminal
24 actions. It would be manifestly unjust to permit prosecutors in a criminal case to
25 mine potentially incriminating evidence against a defendant from a parallel civil
26 proceeding that they would otherwise not be entitled to in a criminal prosecution.
27 *See also Louis Vuitton*, 676 F.3d at 97, n. 11.

28 Here, the similarities of the allegations in the civil and criminal matters will

undoubtedly place Defendant in the “quandary of choosing between waiving [his] Fifth Amendment rights or effectively forfeiting the civil case.” *Transworld*, 886 F. Supp. at 1140. In addition to the prosecution by the NYDA, the investigations in Los Angeles and London are ongoing, thereby creating additional risk to Defendant’s liberty interests and constitutional privilege by this action continuing forward. Ansari Dec., ¶ 13.

Moreover, Plaintiff’s claims arise out of an alleged incident that occurred in January 2014. As both Judge Wilson and Judge Gutierrez noted, “there is little reason to believe that the evidence is likely to deteriorate any more than it already has in the many years since the events underlying this case took place.” *Judd*, Dkt. 62 at 5 (citing *Huett*, Dkt. 50 at 3).

IV. THE PREJUDICE TO DEFENDANT OUTWEIGHS ANY PREJUDICE TO PLAINTIFF

While Plaintiff has a legitimate interest in the expeditious resolution of her case, the prejudice to Defendant and burden on his constitutional rights outweigh Plaintiff’s interests. *See Volmar Distribs. v. N.Y. Post Co.*, 152 F.R.D. 36, 40 (S.D.N.Y. 1993) (granting stay and holding that while the stay will be an inconvenience and delay to plaintiffs, “under settled authority the Fifth Amendment is the more important consideration”). *See also United Techs. Corp. v. Dean*, 906 F. Supp. 27, 28 (D. Mass. 1995) (quoting *Corbin v. Federal Deposit Ins. Corp.*, 74 F.R.D. 147, 149-50 (E.D.N.Y. 1977) (“Nonetheless, while a stay may cause some inconvenience and delay to [Plaintiffs], ‘protection of defendant’s constitutional rights against self-incrimination is the more important consideration.’)). “Furthermore, because the civil and criminal issues are so closely intertwined, [Defendant] may be put to the choice of invoking [his] Fifth Amendment rights sooner than he ought, if discovery in the civil case is allowed to proceed [against him] in any capacity, *see Javier H.*, 218 F.R.D. at 75 (citation omitted), and he also run[s] the risk of exposing [his] criminal defense strategies

to the government, *see In re Adelphia*, 2003 U.S. Dist. LEXIS 9736 at *14.” *Maloney*, 328 F. Supp. 2d at 512. *Accord American Express*, 225 F. Supp. 2d at 265 (stating that failure to grant a stay may expose defense theories to prosecution or otherwise prejudice the criminal case).

V. THE INTERESTS OF THE PUBLIC AND THE COURT ARE BEST SERVED BY A STAY

Granting the stay will not harm any public interest and will promote judicial efficiency. This case is brought for the benefit of the Plaintiff, not the public. The public interest is better served through the criminal proceeding as “the public interest in the criminal case is entitled to precedence over the civil litigant.” *In re Ivan F. Boesky Sec. Litig.*, 128 F.R.D. 47, 49 (S.D.N.Y. 1989). *See also Crawford*, 298 F. Supp. 2d at 319 (“the public’s interest is also served by preserving the integrity of the criminal case”). Additionally, “to the extent any evidence produced by Defendant in discovery here could influence the criminal case, the court notes that ‘the public interest in unimpeded criminal law enforcement outweighs the civil interests here.’” *Green*, 177 F. Supp. 3d at 680 (quoting *SEC v. Telexfree, Inc.*, 52 F. Supp. 3d 349, 353 (D. Mass. 2014)).

Moreover, the delay to the Court is minimal as this case is still in the early stages. Defendant has brought this motion prior to filing an answer to the FAC, and there is currently no trial date set. Thus, staying the case may be better for judicial efficiency. *Maloney*, 328 F. Supp. 2d at 513. As the *Maloney* court explained:

If the civil action is stayed until the conclusion of the criminal proceedings, then it obviates the need to make rulings regarding potential discovery disputes involving issues that may affect the criminal case. . . . Furthermore, the outcome of the criminal proceedings

1 may guide the parties in settlement discussions and potentially
2 eliminate the need to litigate some or all of the issues in this case. *See*
3 *id.* Thus, staying this case preserves judicial resources and may
4 streamline other aspects of the civil case. As a result, this factor also
5 weighs in favor of granting a stay.
6
7

8 *Id.*

9 **Conclusion**

10 For the foregoing reasons, Defendant respectfully requests this Court to
11 grant his motion and enter an order staying this matter as to him, pending
12 resolution of the ongoing criminal cases against Defendant.

13 Dated: June 20, 2024

KUPFERSTEIN MANUEL LLP

15 By: /s/ Phyllis Kupferstein

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17 Attorneys for Defendant Harvey Weinstein
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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Harvey Weinstein, certifies that this brief contains 4,550 words, which complies with the word limit of Local Rule 11-6.1.

Dated: June 20, 2024

By: /s/ Phyllis Kupferstein
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